

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

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## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

17567.3CON3

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on August 2, 2005

Signature

Typed or printed name

Edward Bradley

Application Number

10/765,749

Filed

01/27/2004

First Named Inventor

Bernard Kucinski

Art Unit

3714

Examiner

Chanda L. Harris

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

attorney or agent of record.

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Jacqueline E. Hartt, Ph.D.

Typed or printed name

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attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

8/2/05

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below\*.

\*Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

**BERNARD KUCINSKI et al.**

Serial No. **10/765,749**

Filing Date: **1/27/2004**

For: **METHOD FOR SCORING AND  
DELIVERING TO A READER TEST  
ANSWER IMAGES FOR  
OPEN-ENDED QUESTIONS**

Examiner: **Chanda L. Harris**

Art Unit: **3714**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**ARGUMENTS UNDER PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Responsive to the Examiner's Office Action of May 4, 2005, Paper No./Mail Date 20050501, and contemporaneous with the filing of a Pre-Appeal Brief Request for Review, please enter the remarks set forth below.

Reconsideration and review of the present application by a panel of Examiners is respectfully requested.

**I. Rejection of Claims 1-8, 12, 14, and 17-25 under 35 USC 102(e)**

The Examiner has rejected Claims 1-8, 13, 14, and 17-25 under 35 USC 102(e) as being anticipated by Poor (US 5,672,060). It is respectfully believed that this rejection is clearly in error. Throughout this rejection, the Examiner is equating "the answer space" with Poor's "computer screen", which is improper, as claim language must be read in light of the

Specification, wherein the term “page” is consistently used to mean a hard copy portion of a test booklet that is scanned and imaged.

Please refer to the previous Response, filed on November 24, 2004, pages 5-7, wherein an argument is presented regarding the recitations of independent Claims 1 and 17. In these remarks, it is argued that Poor teaches that it is preferred to capture an image within a predefined region of a page *at the most*, and that areas outside that region are *not* captured. Poor thus teaches away from the invention as claimed in Claims 1 and 17, which recite an ability to access portions of an image that lie outside the “answer space in which an answer to an open-ended question is expected to reside”.

The Examiner’s consideration of “the answer space to correlate to the computer screen in Poor” clearly construes the recitation of Claim 1 incorrectly in light of the Specification. Claim 1 recites: “viewing a first visual image of a first portion of an answer page, the first portion comprising an answer space in which an answer to an open-ended question is expected to reside”. Construction in the way the Examiner holds would result in “viewing a first visual image of a first portion of a computer screen”, which makes no sense in the current case, wherein the “answer page” is clearly defined as being a part of a hard copy of a test booklet.

In context, then, the scrolling referred to in the cited portion of Poor refers to scrolling along the captured image on a computer monitor, the captured image comprising that *assessment area* referred to earlier in the patent, not in a region *outside* the assessment area.

Therefore, it is respectfully believed that independent Claims 1 and 17, and Claims 2-8, 13, 14, and 18-25 dependent therefrom, are not anticipated by Poor '060.

**III. Rejection of Claims 9, 10-12, 15, and 16 under 35 USC 103(a)**

The Examiner has rejected Claims 9, 15, and 16 under 35 USC 103(a) as being unpatentable over Poor '060 in view of Clark et al. (US 5,321,611); Claim 10, over Poor '060 in view of Walker (US 6,093,026); Claim 11, over Poor '060 in view of Martinez (US 5,211,564); and Claim 12, over Poor '060/Martinez in view of Bier et al. (US 5,581,670).

As these claims are dependent, directly or indirectly, from Claim 1, these claims are also believed to patentable define over the cited art.

## Conclusions

Applicants respectfully submit that the application is in a condition for allowance, and passage to issue is respectfully solicited. If the further prosecution of the application can be facilitated through telephone interview between the Examiners and the undersigned, the Examiners are requested to telephone the undersigned at the Examiners' convenience.

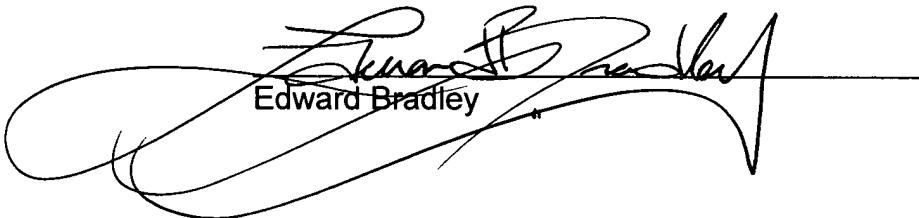
Respectfully submitted,

  
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### CERTIFICATE OF MAILING

I hereby certify that the foregoing is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, this 2nd day of August, 2005.

  
Edward Bradley